IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 20548 of 2007(U)

PETITIONER:

M/S.K.RAVINDRAN, CONTRACTORS,
K.R.COMPLEX, 6/348, Y.M.C.A. ROAD,
CALICUT REPRESENTED BY ITS JOINT MG.PARTNER,
V.RAJEENDRANATH.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVT. PUBLIC WORKS (N.H),
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. CHIEF ENGINEER, OFFICE OF THE CHIEF
ENGINEER, NATIONAL HIGHWAYS, THIRUVANANTHAPURAM.

3. SUPERINTENDING ENGINEER, N.H.NORTH
CIRCLE, KOZHIKODE.

4. EXECUTIVE ENGINEER, NATIONAL HIGHWAYS
DIVISION, KANNUR.

5. ASSISTANT EXECUTIVE ENGINEER,
PWD(N.H), SUB DIVISION, KANNUR.

6. ASSISTANT ENGINEER, NATIONAL HIGHWAYS
SECTION, KANNUR.

BY GOVERNMENT PLEADER SRI. I.V. PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P. (C)NO.20548 OF 2007

Dated this the 10th day of August, 2007

J U D G M E N T

The petitioner entered into a contract with the 3rd respondent for execution of certain works. However, the same could not be executed in view of circumstances which cannot be attributed to the petitioner. Now the petitioner submits that without terminating the contract of the petitioner, the respondents have issued fresh tender notification inviting tenders for the very same work. The petitioner, therefore, seeks the following reliefs.

> "i). To issue a writ of certiorari or any other appropriate writ, order or direction quashing the item No.3 in the schedule to Ext.P6 tender notice.
>
> ii) To declare that the incorporation of works mentioned in the item No.3 of the schedule to Ext.P6 notice is illegal and arbitrary.
>
> iii) To direct the respondents to furnish the estimate of work mentioned in Ext.P1 to P4 or in item No.3 of schedule to Ext.P6 to the petitioner and to sanction the same".

2. The 3rd respondent has filed a statement. In the same it is first stated that the present tender is not for the work which has been given on contract to the petitioner as is evident from Exts.P1 and P6. According to him, Ext.P1 contract with the petitioner was only for

painting and not for repairing work, whereas Ext.P6 is for repairing by changing girders of the bridge. The second contention is that in view of certain circumstances beyond the control of both sides by Ext.R3(b) the petitioner expressed a desire to withdraw from the contract and accordingly, without risk to either side, the contract was closed by Ext.R3(c). The 3rd respondent would submit that therefore, there is no merit in the writ petition.

3. I have considered the rival contentions in detail. A reading of Exts.P1 and P6 would show that these two works are different. In Ext.R3(b), the petitioner himself has stated thus:

> "It is learnt that an estimate for repairing the bridge which includes heavy replacement of steel components had been sent to the Ministry of Surface Transport for sanction.
>
> It is more than one year since we had been waiting for sanction of the estimate and detailed instructions to complete the work.
>
> We cannot further wait and we are not raising any claim for the delay and the consequent losses so far incurred by us if our security and performance guarantee are released.
>
> As such we request you to release our security and performance guarantee forthwith failing which we will be constrained to take legal measures"

4. From the same, there cannot be any doubt that the petitioner himself wanted to withdraw from the contract. That being

so, I do not think that the respondents can be faulted for closing the contract without risk on either side.

In the above circumstances, I do not find any merit in the writ petition and accordingly, the writ petition is dismissed.

S. SIRI JAGAN, JUDGE

Acd/